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Billing Code 4310–55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2014–N213; FXES11120000F2–145–FF08ECAR00]

Orange County Transportation Authority, Orange County, California; M2 Natural Community Conservation Plan/Habitat Conservation Plan, Draft Environmental Impact Report/Environmental Impact Statement, and Incidental Take Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of public meetings.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Orange County Transportation Authority (OCTA/applicant) for an incidental take permit under the Endangered Species Act of 1973, as amended (Act). The permit is needed to authorize take of listed animal species due to construction and habitat

management and monitoring activities within areas affected by covered freeway projects and in preserves in Orange County, California. We have prepared a draft environmental impact statement (DEIS), which is the Federal portion of the draft environmental impact report (DEIR)/DEIS, to analyze the impacts of issuing an incidental take permit based on the OCTA's proposed natural community conservation plan (NCCP)/habitat conservation plan (HCP). The DEIR portion of the joint document was prepared by the OCTA in compliance with the California Environmental Quality Act. The DEIS/DEIR, HCP, and NCCP are available for review.

DATES: Please send written comments on or before **INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**.

Two public meetings will be held to solicit public comments on the DEIR/DEIS. These public meetings will be held on the following dates:

1. Thursday, November 20, 2014, 5 p.m. to 7 p.m., Orange County Transportation Authority 550 S. Main Street, Orange, California 92868.
2. Wednesday, Dec. 3, 2014, 5 p.m. to 7 p.m., Rancho Santa Margarita City Hall 22112 El Paseo, Rancho Santa Margarita, California 92688.

ADDRESSES: *Obtaining Documents:* You may download copies of the DEIS/DEIR, HCP, and NCCP at the OCTA's Web site, at <http://www.octa.net/>. Alternatively, you may use one of the methods under *Submitting Comments* to request hard copies or a CD-ROM of the documents.

Submitting Comments: You may submit comments or requests for copies or more

information by one of the following methods.

- *U.S. Mail:* Mr. Mendel Stewart, Field Supervisor, U.S. Fish and Wildlife Service, 2177 Salk Avenue, Suite 250, Carlsbad, CA 92008.
- *In-Person Drop-off, Viewing, or Pickup:* Call (760) 431-1766 to make an appointment during regular business hours at the above address or at the OCTA Office 550 S Main Street, Orange, CA 92868.
- *Fax:* Mr. Mendel Stewart, Field Supervisor, U.S. Fish and Wildlife Service, (760) 431-5901, Attn.: Orange County Transportation Authority M2 HCP/EIS Comments.

Hardbound copies are also available for viewing at the following Orange County public libraries:

1. Tustin Library, 345 E. Main St. Tustin, CA 92780.
2. Mission Viejo Library, 100 Civic Center, Mission Viejo, CA 92691.
3. Garden Grove Regional Library, 11200 Stanford Ave, Garden Grove, CA 92840.

The public meeting locations are:

1. Orange: OCTA, Conference Rooms 103/104, 550 South Main Street, Orange, CA 92863.
2. Rancho Santa Margarita City Hall, 22112 El Paseo, Rancho Santa Margarita, California 92688.

FOR FURTHER INFORMATION CONTACT: Ms. Karen A. Goebel, Assistant

Field Supervisor, at the Carlsbad Fish and Wildlife Office address above; telephone (760) 431-9440. Information and comments related specifically to the DEIR and the California Environmental Quality Act should be submitted to Mr. Dan Phu, Orange County Transportation Authority (Attn: M2 NCCP/HCP), 550 South Main Street, P.O. Box 14184, Orange, CA 92863-1584.

SUPPLEMENTARY INFORMATION: We announce receipt of an application from the Orange County Transportation Authority (OCTA/applicant) for an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). The applicant is requesting a permit to incidentally take 10 animal species (including three federally listed species) and seeking assurances for 3 plant species during the term of the proposed 40-year permit. The permit is needed to authorize take of listed animal species due to construction and habitat management and monitoring activities within areas affected by covered freeway projects and in preserves in Orange County, California.

We have prepared a draft environmental impact statement (DEIS), which is the Federal portion of the draft environmental impact report (DEIR)/DEIS, to analyze the impacts of issuing an incidental take permit based on the OCTA's proposed natural community conservation plan (NCCP)/habitat conservation plan (HCP). The DEIR portion of the joint document was prepared by the OCTA in compliance with the California Environmental Quality Act. The analyses provided in the DEIR/DEIS are intended to inform the public of the proposed action (i.e., permit issuance), alternatives,

and associated impacts; address public comments received during the scoping period for the DEIR/DEIS; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

Background

Section 9 of the Act and Federal regulations prohibit the “take” of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct (16 U.S.C. 1538). “Harm” includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, we may issue permits to authorize incidental take, which is defined under the Act as take that is incidental to, and not the purpose of, otherwise lawful activities. The ESA’s take prohibitions do not apply to federally listed plants. Plant species would be included in the permit in recognition of the conservation measures provided to plants under the amended HCP and would receive assurances under the Service’s “No Surprises” rule.

The applicant seeks incidental take authorization for 10 animal species and assurances for 3 plant species (all unlisted). Collectively the 13 listed and unlisted

species are referred to as “covered species” by the NCCP/HCP and include the 3 plant species, 1 unlisted fish species, 3 reptile species (all unlisted), 4 bird species (2 endangered, 1 threatened, and 1 unlisted), and 2 mammal species (both unlisted). The permit would provide take authorization for all animal species and assurances for all plant species identified by the NCCP/HCP as “covered species.” Take authorized for listed covered animal species would be effective upon permit issuance. For currently unlisted covered animal species, take authorization would become effective concurrent with listing, should the species be listed under the Act during the permit term.

The proposed permit would include the following three federally listed animal species: Least Bell’s vireo (*Vireo bellii pusillus*; endangered), southwestern willow flycatcher (*Empidonax traillii extimus*; endangered), and coastal California gnatcatcher (*Polioptila californica californica*; threatened). See the DEIR/DEIS and NCCP/HCP for additional information on unlisted species proposed for coverage under the permit.

The NCCP/HCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through avoidance, minimization, and mitigation measures. These measures include purchasing lands for permanent conservation, as well as performing restoration on lands currently protected that will enhance habitat to address mitigation requirements associated with the proposed NCCP/HCP. The proposed NCCP/HCP and permit would accommodate the implementation of the OCTA’s 13 proposed freeway projects designed to reduce congestion, increase capacity, and improve traffic flow of Orange County’s important

transportation infrastructure. It would also accommodate management activities conducted on the OCTA acquired lands (or Preserves) within Orange County.

The OCTA's NCCP/HCP Plan Area includes approximately 511,476 ac (206,987 ha), encompassing all of Orange County, California. The NCCP/HCP is intended to function independently of other HCPs within the Orange County region (e.g., Central and Coastal Orange County NCCP/HCP, Orange County Southern HCP, and Western Riverside County's Multiple Species Habitat Conservation Plan).

As described in the Draft NCCP/HCP and the DEIR/DEIS, the proposed NCCP/HCP would provide protection measures for species on the OCTA covered Freeway projects as well as for covered activities within the OCTA Preserves, in part by acquiring lands for permanent conservation. Covered activities, including planned and future projects, are estimated to directly affect up to 141 ac (57 ha) of habitat and indirectly affect up to 484.4 ac (196 ha) of habitat for covered species that will require mitigation over the 40-year term of the Permit. Additionally, preserve management and monitoring may adversely affect up to 11 ac (4.5 ha) of habitat. Prior to October 2013, the OCTA purchased five open-space properties totaling 940 ac (380 ha), of which about 900 ac (364 ha) is undeveloped open space and will be available to mitigate for project impacts to covered species. Additional Preserve acquisitions [at least 250 ac (101 ha)] are planned in the near future and are part of this NCCP/HCP. All Preserves will have endowments set up to cover long-term management needs. OCTA has also approved funding for 11 habitat restoration projects in the Plan Area totaling about 400 ac (162 ha).

Future restoration efforts are identified within the NCCP/HCP to further benefit covered species.

The primary source of funding for the NCCP/HCP will derive from the M2 transportation sales tax designed to raise money to improve Orange County's transportation system. As part of the M2 sales tax initiative, a minimum of 5 percent of the revenues from the freeway program will be set aside for the M2 Environmental Mitigation Program (EMP) revenues. These funds will be used for "programmatic mitigation." The development and implementation of the M2 NCCP/HCP will use a portion of this funding source to achieve higher value environmental benefits such as habitat protection, connectivity, and resource preservation/enhancement in exchange for streamlined project approvals for the M2 freeway projects. The expenditures for key components of the NCCP/HCP conservation strategy that achieve upfront and comprehensive mitigation (e.g., Preserve acquisitions and funding of restoration projects) will be paid for through M2 EMP revenues. Any costs associated with implementing avoidance and minimization measures, as described in Section 5.6, "Avoidance and Minimization," will be funded through the individual construction budgets and will not rely on funding under the M2 EMP.

The NCCP/HCP includes measures to avoid and minimize incidental take of the covered species, emphasizing project design modifications to protect covered species and their habitats. A monitoring and reporting plan would gauge the Plan's success based on achievement of biological goals and objectives and would ensure that conservation keeps

pace with development. The NCCP/HCP also includes a management program, including adaptive management, which allows for changes in the conservation program if the biological species objectives are not met, or new information becomes available to improve the efficacy of the NCCP/HCP's conservation strategy.

Covered projects and activities would include 13 discrete proposed freeway segments in which freeway projects have been identified for coverage under the NCCP/HCP. These proposed projects are designed to reduce congestion, increase capacity, and smooth traffic flows of Orange County's important transportation infrastructure. In addition, activities related to ongoing habitat management, restoration, and monitoring activities by preserve managers and activities necessary to provide limited public access have been identified for coverage.

National Environmental Policy Act Compliance

The DEIR/DEIS analyzes two alternatives in addition to the proposed action (i.e., permit issuance based on the Draft NCCP/HCP) described above. The other alternatives include a no-action (i.e., no permit) alternative and a reduced plan alternative covering only species that are federally or State-listed as threatened or endangered. Two other alternatives were considered during the planning process but were not evaluated in the DEIS because neither met the purpose or need of both the OCTA and the Service; these alternatives involved a no-take alternative and an alternative requiring the OCTA to participate in project-by-project mitigation.

Proposed Action

Our proposed action is to issue an incidental take permit to the applicant, who would implement the HCP, described above. If we approve the permit, incidental take of covered species would be authorized for the applicant's activities associated with the construction freeway improvement projects and Preserve Management, Restoration, and Monitoring Activities in Orange County, California.

No Project/No Action Alternative

Under the No Project/No Action Alternative, the proposed NCCP/HCP, including implementation of conservation measures and creation of a Preserve system, would not be adopted. Compliance with Act and the California Endangered Species Act would be addressed project-by-project for each of the M2 freeway projects. In contrast to the comprehensive strategies to avoid, minimize, or mitigate effects on sensitive species that would be implemented under the proposed action, the No Project/No Action Alternative would address impacts to affected listed species with project-by-project conservation and mitigation. The landscape-scale conservation actions intended to benefit both listed and non-listed species under the NCCP/HCP would not occur under the No Project/No Action Alternative.

Reduced Plan Alternative

Under the Reduced Plan Alternative, only those species that are federally or State-listed as threatened or endangered would be proposed for coverage under the

NCCP/HCP. Accordingly, only the southwestern willow flycatcher, least Bell's vireo, and coastal California gnatcatcher would be covered under the Reduced Plan Alternative. The amount of land acquisition and Preserve system assembled would be identical to that of the proposed Plan. The amount of species-specific habitat restoration required would be less, however, because the conservation strategy measures would be focused only on the three ESA-listed species mentioned above.

Public Comments

The Service and OCTA invite the public to comment on the Draft NCCP/HCP, Draft Implementing Agreement and DEIR/DEIS during a 90-day public comment period beginning the date of this notice. While written comments are encouraged, we will accept both written and oral comments at the public meetings. Please direct written comments to the Service contact listed in the **ADDRESSES** section, and any questions to the Service contact listed in the **FOR FURTHER INFORMATION CONTACT** section. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Reasonable Accommodation

Individuals who require special accommodations (American Sign Language interpreter, accessible seating, documentation in alternate formats, etc.) to attend and participate in the public meetings are requested to contact Marissa Espino (mespino@octa.net, 714-560-5607) at least 14 days prior to the scheduled public meeting date. Information regarding this proposed action is available in alternative formats upon request.

Next Steps

Issuance of an incidental take permit is a Federal proposed action subject to compliance with NEPA. This notice is provided under section 10(a) of the Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to prepare a final EIS. A permit decision will be made no sooner than 30 days after the publication in the **Federal Register** of the notice of availability for final EIS and completion of the record of decision.

Dated: October 27, 2014.

**Alexandra Pitts,
Deputy Regional Director,
Pacific Southwest Region,
Sacramento, California.**

<FRDOC> [FR Doc. 2014-26361 Filed 11-6-14; 8:45 am]

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